

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
V.	§	No. 3:07-cr-257-N
	§	
DERRICK ADRIAN JOHNSON (01),	§	
	§	
Defendant.	§	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. An objection was filed by Defendant. The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.


As the Court lacks jurisdiction over the substantively unauthorized successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, it is ORDERED, ADJUDGED, and DECREED that the motion is TRANSFERRED to the United States Court of Appeals for the Fifth Circuit for appropriate action.

Because the Court is transferring the successive Section 2255 motion to the Fifth Circuit for appropriate action, the Court need not address whether Defendant is entitled to a certificate of appealability (“COA”). *See United States v. Fulton*, 780

F.3d 683, 688 (5th Cir. 2015) (“[A] transfer order under 28 U.S.C. § 1631 is not a final order within the meaning of [28 U.S.C.] § 2253(c)(1)(B), and the appeal of such an order does not require a COA.”). But, in the event that Defendant will file a notice of appeal, the Court notes that he must pay the filing fee or file a motion for leave proceed *in forma pauperis* on appeal.

Further, because Defendant’s motion to set aside judgment invoking Federal Rule of Civil Procedure 60(d)(3) is in substance a successive motion under 28 U.S.C. § 2255, the Clerk of Court is DIRECTED to open for statistical purposes a new Section 2255 case (nature of suit 510 directly assigned, per Special Order 3-250, to United States District Judge David C. Godbey and United States Magistrate Judge David L. Horan) and to close the same on the basis of the order.

SO ORDERED this 30<sup>th</sup> day of July, 2018.

  
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DAVID C. GODBEY  
UNITED STATES DISTRICT JUDGE